

STATE OF MICHIGAN
COURT OF APPEALS

DAVID KIRCHER,

Plaintiff-Appellant,

v

RONALD A. STEINBERG,

Defendant-Appellee.

UNPUBLISHED

September 27, 2002

No. 224781

Oakland Circuit Court

LC No. 99-014959-NZ

ON REMAND

Before: Owens, P.J., and Holbrook, Jr. and Gage, JJ.

MEMORANDUM.

This case is before us on remand from the Supreme Court. After affirming the trial court's order granting defendant summary disposition in this case, we granted defendant's motion for fees. By way of order, on August 1, 2002, in lieu of granting leave to appeal, the Supreme Court remanded for "explication of the reasons for awarding sanctions for a vexatious appeal." *Kircher v Steinberg*, ___ Mich ___ (2002).

Under MCR 7.216(C)(1)(a), this Court may assess actual and punitive damages or take other disciplinary action when the Court determines that an appeal was vexatious because the appeal was taken for the purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal. Sanctions may be proper when the issues raised in the appeal are virtually indistinguishable from those raised in prior litigation. See *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 222; 561 NW2d 854 (1997).

Before the initiation of this case, a default judgment was entered against plaintiff in a preceding lawsuit involving plaintiff's tenant. Plaintiff unsuccessfully challenged that default judgment. Plaintiff thereafter initiated the present case, bringing claims of "due process violations" against defendant, who was the opposing counsel in the prior lawsuit, based on defendant obtaining an order permitting substituted service in that action.

Plaintiff has repeatedly resorted to the judicial system to challenge the already determined issue whether he received due process in the tenant's action against him. The trial court correctly noted that plaintiff's complaint in this case lacked merit because there was no cause of action against defendant as the attorney representing the party who sued plaintiff in the prior action. We agree with Justice Young's dissent that plaintiff's complaint in this case was frivolous and without merit. Plaintiff's present appeal is likewise frivolous and without merit

because in bringing the appeal, plaintiff had no reasonable basis for belief that there was a meritorious issue to be determined. We adopt Justice Young's statement that "[i]f this appeal is not one in which sanctions are appropriately awarded, [we] simply cannot imagine what kind of case would justify such an award."

/s/ Donald S. Owens

/s/ Donald E. Holbrook, Jr.

/s/ Hilda R. Gage